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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,280	01/10/2006	Christine Linke	2002P01602WOUS	8863

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BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER

SMITH, RICHARD A

ART UNIT	PAPER NUMBER
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2841

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/540,280	Applicant(s) LINKE ET AL.	
	Examiner R. Alexander Smith	Art Unit 2841	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☒ Newly proposed or amended claim(s) 32,33 and 35-37 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 32 and 33.

Claim(s) objected to: 35-37.

Claim(s) rejected: 13,14 and 18-31.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/R. A. Smith/
 Primary Examiner
 Art Unit: 2841

Continuation of 3. NOTE:

The proposed amendment to claim 14 results in new issues requiring further consideration since the rejections as applied in the Office action mailed March 4, 2009 were based on the claim 14 limitations as filed on November 19, 2008.

Continuation of 11. does NOT place the application in condition for allowance because:

With respect to claims 13, 14 and 19 and the arguments that Suzuki '557 does not teach the use of thermochromic pigments, the temperature range, and the temperature, i.e., 4 C, inside the refrigerator as argued on pages 10-11 by Applicant are not persuasive for the following reasons.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the use of thermochromic pigments, and the temperature range, and inside a refrigerator) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Further, Suzuki does address application to frozen food packages (see column 14 line 36 to column 15 line 16).

Furthermore, in response to applicant's argument that Suzuki does not provide the temperature for inside the refrigerator: The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case Suzuki discloses a temperature indicating device, wherein the indicating material can be chosen according to the temperature or the temperature range needed, and teaches that the compositions are available for (temperature) leak detection for a refrigerator; and,

that compositions are available for attachment to frozen food packages.

With respect to Plimpton and Plimpton in view of Hicken as argued on pages 11-12, the arguments not persuasive for the following reasons.

With respect to Plimpton and claim 13 as argued on pages 11-12, these arguments are not persuasive with respect to the 102(b) rejection as applied to claims 13, 14 and 19 and the 103(a) rejections applied to claims 18, 23 and 24, since the rejections were written such that they did not assert that Plimpton '549 disclosed a refrigeration device. Please note that last two paragraphs on page 4 of the final Office action mailed March 4, 2009.

With respect to the argument on pages 11-12 that "It is asserted in the Office Action that Plimpton '549 discloses a temperature-indicating element for a refrigeration device", this argument is not persuasive since the applied rejections to claims 25-28 and claims 29-30 were written such that they did not assert that Plimpton '549, Hicken, MacWilliams et al. or the combination of Plimpton in view of Hicken and then further in view of MacWilliams et al. disclosed a refrigeration device. Please note that first two paragraphs on page 9 of the final Office action mailed March 4, 2009.

Furthermore the arguments on page 12 with respect to Plimpton '549 not teaching the use of thermochromic pigments and 4 C: In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, claim 25 was rejected as being unpatentable over Plimpton in view of Hicken wherein Hicken was relied upon for providing the teaching of thermochromic pigments and a temperature of about 4 C.

With respect to the middle paragraph argument on page 12 regarding Plimpton '549 having no backing being useful for a refrigerator, an adhesive backing structure, and having a bore for tethering: As already mentioned above, these arguments are not persuasive since (a) it is noted that the features upon which applicant relies are not recited in the rejected, and (b) one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

With respect to the combination of Plimpton in view of Hicken and then further in view of Marques et al. as applied to claim 31: Although Marques et al. is briefly mentioned in the arguments at the bottom of page 12, it is Marques et al. who was relied upon for teaching of a refrigeration device and application of a temperature indicating element thereto.